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No. 94-392

IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM, 1994

CURTIS RAY WARD
Petitioner,
v.
THE STATE OF TEXAS,
Respondent.

On Petition for Writ of Certiorari
To the Texas Court of Appeals
For the First District

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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BEST AVAILABLE COPY

QUESTIONS PRESENTED

I. Does assessment of a tax, pursuant to the Texas Controlled Substance Tax Act constitute punishment for fifth amendment Double Jeopardy Clause purposes?

II. Does assessment and partial payment of a $109,546.60 tax pursuant to the Texas Controlled Substances Tax Act bar any subsequent prosecution for possession of the marijuana that constituted the basis for imposition of the tex?

III. Does a civil forfeiture proceeding pursuant to Article 59 of the Texas Code of Criminal Procedure constitute punishment for fifth amendment Double Jeopardy clause purposes?

IV. Does a civil forfeiture judgment pursuant to Article 59 of the Texas Code of Criminal Procedure bar any subsequent porsecution for possession of the marijuana that constituted the basis for the imposition of the tax?

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

NOW COMES the State of Texas, Respondent herein, by and through the Attorney General of Texas, and files this Response to Petition for Writ of Certiorari.

OPINION BELOW

The opinion of the court below is reported at 870 S.W.2d 659 (Tex. App. -- Houston [1st Dist.] 1994). A copy is attached to the petition as Exhibit E.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

Respondent has reviewed the petition for writ of certiorari and agrees with Petitioner that the case should be remanded to the Court of Appeals for the First Judicial District of Texas for further consideration in light of *Department of Revenue of Montana v. Kurth Ranch,* 114 S.Ct. 1937 (1994). Because the lower court did not have the benefit of this Court's decision in *Kurth Ranch* when this case was decided, its opinion did not address the issues in a way that would facilitate proper resolution by this Court. The input of the state court on the application of *Kurth Ranch* to the facts involved in this case can assist the Court in its treatment of the issue should the case come before it again.

Respectfully submitted,

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